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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re LEILANI T., a Person Coming Under
the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

JOCELYN A. et al.,

Defendants and Appellants.

D053314

(Super. Ct. No. SJ11442)

APPEAL from a judgment of the Superior Court of San Diego County, Ronald L. Johnson, Judge. (Retired judge of the San Diego Sup. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Jocelyn A. and A.T. appeal the judgment terminating their parental rights over their daughter Leilani T. They contend the juvenile court erred by finding Leilani was adoptable and Jocelyn contends the court erred by declining to apply the beneficial

relationship exception to termination (Welf. & Inst. Code, § 366.26, subd. (c)(1)(B)(i)).¹

Jocelyn and A.T. join in each other's arguments. We affirm.

BACKGROUND

Leilani was born prematurely in August 2006 and remained in the hospital. In October the San Diego County Health and Human Services Agency (the Agency) filed a dependency petition because Jocelyn had a history of drug use dating from February 2005 when her other two children were removed; she continued to use drugs; and she had positive tests for methamphetamine while pregnant with Leilani, with the last test occurring just four days before Leilani was born after 28 weeks' gestation. Following Leilani's release from the hospital, she was detained in a foster home. In February 2007 she was placed with a foster family who wished to adopt her. The section 366.26 hearing took place in June 2008.

ADOPTABILITY

Jocelyn and A.T. contend Leilani was not adoptable because she had severe health problems and undetermined developmental delays, the foster parents had vacillated about adoption and their home study was not complete, and there was no evidence the other prospective adoptive families had met Leilani, been apprised of her medical issues, or had approved home studies.

"The issue of adoptability posed in a section 366.26 hearing focuses on the minor, e.g., whether the minor's age, physical condition, and emotional state make it difficult to

¹ All further statutory references are to the Welfare and Institutions Code.

find a person willing to adopt the minor." (*In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1649, italics omitted.) While psychological, behavioral, medical and possible developmental problems may make it more difficult to find adoptive homes, they do not necessarily preclude an adoptability finding. (*In re Helen W.* (2007) 150 Cal.App.4th 71, 79; *In re Lukas B.* (2000) 79 Cal.App.4th 1145, 1154; *In re Jennilee T.* (1992) 3 Cal.App.4th 212, 224-225.) A prospective adoptive family's willingness to adopt "generally indicates the minor is likely to be adopted within a reasonable time either by the prospective adoptive parent or by some other family." (*In re Sarah M.*, *supra*, 22 Cal.App.4th at p. 1650, italics omitted.) An adoptability finding does not require "that the minor already be in a potential adoptive home or that there be a proposed adoptive parent 'waiting in the wings.' [Citations.]" (*Id.* at p. 1649.) "All that is required is clear and convincing evidence of the likelihood that adoption will be realized within a reasonable time." (*In re Zeth S.* (2003) 31 Cal.4th 396, 406, citing *In re Jennilee T.*, *supra*, 3 Cal.App.4th at p. 223.) The Agency bore the burden of proof on this issue. (*In re Gregory A.* (2005) 126 Cal.App.4th 1554, 1557, 1559-1561.) Construing the record in the light most favorable to the judgment, we conclude substantial evidence supports the adoptability finding. (*In re Josue G.* (2003) 106 Cal.App.4th 725, 732; *In re J.I.* (2003) 108 Cal.App.4th 903, 911.)

In November 2007 the Agency reported that the foster mother was unable to adopt due to her own health condition. In April 2008 the Agency reported that the foster parents had expressed interest in adopting, had a favorable assessment, and had begun the home study process. By early June the foster parents had made "significant progress" on

the home study, were committed to adopting Leilani, and were "highly capable of meeting her medical and emotional needs." At the section 366.26 hearing the social worker testified that the foster parents had addressed the foster mother's health condition and it was no longer an issue. The social worker had no concern that the health condition would interfere with the adoption.

Furthermore, questions about this family's commitment to adoption are irrelevant in light of Leilani's general adoptability. (*In re T.S.* (1993) 113 Cal.App.4th 1323, 1329.) Leilani did have medical issues. She had lung disease and had spent a lot of time in the hospital, which had included the removal of cysts that had caused breathing problems. Otherwise her health was good. She had some developmental problems for which she received services but by November 2007 the problems had gradually but significantly improved. Some concerns remained about her speech development due to her prematurity but she was on target in all other areas. She was happy, active, and well-adjusted. She had a "sweet demeanor" and a "gorgeous smile." She loved books and loved to explore and play. At the time of the section 366.26 hearing she was just 22 months old. Based on those factors and her intelligence, the social worker believed that she was adoptable despite her medical issues. Aside from the foster parents, there were 22 families willing to adopt a child with her characteristics and medical issues.

BENEFICIAL RELATIONSHIP EXCEPTION

Section 366.26, subdivision (c)(1) allows termination of parental rights upon clear and convincing evidence of adoptability. An exception exists if "[t]he parents have maintained regular visitation and contact with the child and the child would benefit from

continuing the relationship." (§ 366.26, subd. (c)(1)(B)(i).) A beneficial relationship is one that "promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) The existence of this relationship is determined by "[t]he age of the child, the portion of the child's life spent in the parent's custody, the 'positive' or 'negative' effect of interaction between parent and child, and the child's particular needs. . . ." (*Id.* at p. 576.) Examining the evidence in the light most favorable to the judgment, we conclude that Jocelyn failed to meet her burden of showing a beneficial relationship. (*Ibid.*; *In re Cristella C.* (1992) 6 Cal.App.4th 1363, 1373.)

Jocelyn visited Leilani regularly at the outset of the case but stopped visiting in early September 2007. She resumed in January 2008 and then visited a total of nine times. When visitation resumed, the first two visits ended early because Leilani was extremely upset at Jocelyn's presence. At subsequent visits, Leilani often displayed fear when she first saw Jocelyn and sought comfort from her foster parents, then warmed up to Jocelyn and showed no distress when visits ended. Between April and June Jocelyn attended three visits and failed to appear for four. In the six months preceding the June section 366.26 hearing, she did not ask for more visitation. All of her visits were supervised.

Twenty-two-month-old Leilani had never been in Jocelyn's custody and Jocelyn had not formed a parental relationship with her. Leilani had lived with her foster parents for 16 months. She was very attached to them, viewed them as her parents, called them "Mama" and "Papi," and sought comfort from them even during visits with Jocelyn. The

foster parents provided excellent care and Leilani needed stability and permanence. The court did not err by declining to apply the beneficial relationship exception.

DISPOSITION

Judgment affirmed.

HUFFMAN, Acting P. J.

WE CONCUR:

HALLER, J.

McDONALD, J.